



ORAL COMMENTS OF KAREN DARCH PRESIDENT, VILLAGE OF BARRINGTON, IL AND CO-CHAIR, TRAC COALITION OF LOCAL GOVERNMENTS

(Village of Barrington, 200 South Hough Street, Barrington, IL 60010; 847/304-3400)

Before The Federal Railroad Administration And

Pipelines & Hazardous Materials Safety Administration August 28, 2013 Public Meeting

My name is Karen Darch and I am the President of the Village of Barrington, Illinois and a Co-Chair of TRAC -- an ad hoc coalition of local governments in the greater Chicago suburbs that formed in 2008 in response to a rail merger. I am here today to provide the perspective of local governments when it comes to the matters of rail safety that are on this meeting's agenda.

I am thankful to both FRA and PHMSA for the opportunity to provide a summary perspective about critical rail safety issues from the viewpoint of a stakeholder group that doesn't normally have a seat at the table. Make no mistake about it, local governments are key stakeholders in the decisions you make.

The Chicagoland area is served by six of the seven Class I railroads, and in fact, two Class I's run through my town – Canadian National and Union Pacific. Chicagoland has had a symbiotic growth relationship with the rail industry, so we recognize its value to the economic vitality of the region and our

nation. As the mayor of a small town, I also understand that no government, industry or company can guarantee 100% safety to the public 100% of the time.

But, local governments are on the front lines of response when something goes wrong and a rail accident occurs. Local emergency response teams are charged with safeguarding the public welfare during these worst case scenarios, as well as the safety interests of the involved railroad's employees. Frankly, we don't want to deal with the aftermath of rail accidents in need of emergency response – we prefer that such events be prevented because it's local communities that are left coping with the devastation when the worst occurs. As everyone in this room well knows, there are no magic wands in real life, so all the king's horses and all the king's men can't put Lac-Megantic -- or its victims -- back together again. In Lac-Megantic, July 6, 2013 will always be a date that marks a profound change in its history.

Additionally, when an accident like that occurs, local governments must get the clean-up operations underway immediately and can't wait to respond until the courts determine who is liable for what. If there's been an eye-opening moment for local governments in the wake of this tragedy, it's been to watch the involved companies attempt to shift blame and payment responsibility to others.

Today, I won't make suggestions as to the specifics of amending part 174. I leave that to you. As an elected mayor, however, I know that the public must count on the railroads to operate safely and in full compliance with the regulatory framework you set. Because local governments are precluded from enacting any community-specific protections, we are wholly dependent upon the rail industry <u>and</u> its federal regulators to be the first line of defense in preventing a rail tragedy.

Unfortunately, your combined track record has been less than stellar when it comes to improving the crashworthiness of the DOT-111 tank car -- the primary car used in the transport of dangerous hazmat like crude and ethanol in this country and in Canada. Since 1991, you've known that this rail car has a high propensity to rupture in derailment scenarios, but until 2011, nothing was done to remedy this profoundly dangerous situation. Instead, over the last 20 years, thousands more defective tank cars have been built and placed into service.

I have to be blunt here, but from my perspective, the DOT-111 is the Ford Pinto of rail cars. For those of you who are too young to remember, the Pinto is on Time magazine's list of the "50 Worst Cars of All Time" because (and I quote) "The car tended to erupt in flame in rear-end collisions. The Pinto is at

the end of one of autodom's most notorious paper trails, the Ford Pinto memo, which ruthlessly calculates the cost of reinforcing the rear end (\$121 million) versus the potential payout to victims (\$50 million). Conclusion? Let 'em burn."

Now you may consider such a comparison between the Pinto and the DOT-111 tank car inflammatory, but the facts surrounding regulatory efforts to make these two defective cars safer share some eerie similarities. A 1977 investigative journalism piece noted about the Pinto:

"The Ford people started arguing against (improved safety standards)... Sure, cars catch fire and people burn occasionally. <u>But statistically auto fires are such a minor problem."</u> I believe we've heard the same thing said about hazmat derailments.

"All Ford had to do was convince (regulators) that certain safety standards would add ... to the price of cars. ... This could damage the auto industry." Again, it seems that this same argument has been used to defend the DOT-111.

The characertization of the DOT-111 as the Pinto of tank cars has actually been affirmed by the AAR's Tank Car Committee when it belatedly petitioned PHMSA in March 2011 to adopt improved safety-related standards for <u>newly</u> manufactured DOT-111 tank cars. Unfortunately, that doesn't go far enough, and that's why Barrington and the TRAC Coalition – based on the findings and repeated recommendations from the NTSB's Cherry Valley derailment investigation — filed a petition with PHMSA in spring of 2012 asking that the <u>existing</u> DOT-111 tank cars be retrofitted to make them more crashworthy as well.

Yet today, the foot-dragging on this critical safety issue continues with a broad array of industry groups aligned in lockstep trying to block a retrofit program. Industry needs to face the fact that its insistence on using the existing DOT-111's without a retrofit to transport packing group I and II materials constitutes a willful and wanton disregard for the people and communities that will, without question, be harmed during the thirty year remaining lifespan for the existing fleet. Such a position shows a callous and indefensible disregard for public safety – especially when you've had two-plus decades to fix the problem.

While there are likely to be many causal factors involved in the Lac-Megantic derailment, tank cars with the propensity to rupture are, quite literally, at the heart of the tragedy. So, even if industry believes today that the cost-benefit analysis is in its favor, you can't turn a blind eye to the bottom line fall-out from that derailment. In 2011, the AAR itself said that retrofitting the existing tank cars to make them safer would cost \$15,000 per car. Amortized over the next 30 years, we're talking only \$500 per car per year, so industry can't realistically claim this is prohibitively expensive.

The rail shipment of flammable hazmat like crude and ethanol has increased exponentially since 2008, but neither industry standards nor federal safety regulations have kept pace with that reality. Five-year shipment data for crude and ethanol **CLEARLY** indicates an ever-increasing risk for a catastrophic accident.

When it comes to Lac-Megantic, the environmental remediation costs are likely to be in excess of \$200 million dollars. That astronomical figure doesn't even begin to account for the civil damages that will ensue if and when the families of the victims get their day in court. Because MMA's in bankruptcy and its operating license will be suspended in Canada beginning on October 1 due to inadequate liability insurance, I ask the regulators in this room, who do you expect will pay for the clean-up? Do you really believe that it should be the taxpayers left footing the bill for events like Lac-Megantic when they were powerless to control it?

How do you expect the families of the dead and those who were injured in this accident to be justly compensated when MMA is bankrupt and other culpable companies defend themselves by saying that were only acting per regulation? Does anyone think that the profound losses suffered by the families of the 47 dead and those that were injured will be justly compensated by a corporate letter of apology?!

The clock has been ticking on the DOT-111 since 1991, so it's way past time for anyone to accept continued excuses and delays. Industry -- <u>AND ITS REGULATORS</u> -- need to take a deep breath and do what's right <u>NOW</u> before another tragedy occurs.

Yes, I can assure you that local governments understand that the energy market is vital to this nation. Yes, we know that a retrofit program for the existing DOT-111's will come with a cost. Yes, we know that the railroads will undergo a period during which they will be able to transport fewer carloads of

such high margin commodities and their bottom lines will reflect that. Yes, during a retrofit program, there could be some short-term disruptions in the rail transport of certain hazmat.

But, to point out the obvious, it's the very industries that are now screaming about a retrofit program that created this self-inflicted crisis by failing to do the right thing about these dangerous tank cars decades ago. Do federal regulators really think it makes sense to reward 20 years of industry inaction on the DOT-111 by continuing to permit tens of thousands of these weak link tank cars to remain part of the rolling pipeline stock for hazmat for another three decades to come? The very idea defies comprehension from the perspective of this mayor, and I would imagine, from the perspective of most Americans and Canadians.

I will provide additional written comments on other matters on this meeting's agenda, and while we believe there are safety enhancements being instituted in the FRA Emergency Order and in Canada that have some merit, we also think there are some issues on the agenda need more attention, including the matters we raised in our Spring 2012 petition to PHMSA.

Along with the DOT-111 retrofit, we ask that the railroad industry be required to provide emergency responders with an accurate consist <u>in real time</u> to facilitate the ability of emergency teams to respond most effectively when an accident occurs. Given 10,000 foot long freight trains and crude/ethanol unit trains, it makes no sense to require emergency responders to await the delivery of a paper consist from the locomotive engineer or a brakeman who may be unable to walk over a mile to where the first responders are, or unable to circumvent derailed, burning cars.

Thank you. I would now be happy to respond to any questions.